

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

RPS GUARD SERVICES, INC., d/b/a
BURNS INTERNATIONAL SECURITY SERVICES

and

Case 25--CA--21110

INTERNATIONAL UNION, UNITED PLANT
GUARD WORKERS OF AMERICA (UPGWA)

April 30, 1991

DECISION AND ORDER

By Chairman Stephens and Members Cravath and Revaney
On February 6, 1991, the General Counsel of the National Labor Relations

Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 25--RC--8958. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); Frontier Hotel, 265 NLRB 343 (1982).) The Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On March 22, 1991, the General Counsel filed a motion to strike portions of the Respondent's answer and a Motion for Summary Judgment. On March 28, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response on April 10, 1991.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of the Board's unit determination in the representation proceeding. As it did in the underlying representation proceeding, the Respondent argues in its brief to the Board, and as affirmative defenses in its answer, that the Union's certification is improper because the bargaining unit fails to include all individuals who are guards within the meaning of Section 9(b)(3) of the Act, and because the Union does not seek to represent a unit comprised of all guards as defined in Section 9(b)(3). For these reasons, the Respondent contends that the Board should deny the General Counsel's motion, reconsider its prior determination in the representation proceeding, and dismiss the complaint in its entirety.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See Pittsburgh Plate Glass Co. v. NLRB, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.¹

On the entire record, the Board makes the following

¹ The General Counsel's motion to strike portions of the Respondent's answer is denied.

Findings of Fact

I. Jurisdiction

The Respondent, a Delaware corporation with its principal office and place of business at Parsippany, New Jersey, is engaged in the business of providing security and fire protection services to various customers throughout the United States, including Bethlehem Steel Corporation at its Burns Harbor facility located in Chesterton, Indiana. During the 12-month period preceding the issuance of the complaint, a representative period, the Respondent, in the course and conduct of its business operations, provided services valued in excess of \$50,000 to customers located outside the State of New Jersey, including Bethlehem Steel's Burns Harbor facility, and during the same period derived in the course and conduct of its business gross revenues in excess of \$100,000. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Certification

Following the election held on December 4, 1990, the Union was certified on December 12, 1990, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time security officers employed by the Employer who perform guard services for the Bethlehem Steel Corporation at its Burns Harbor facility; but excluding all other employees, and all security lieutenants, captains and other supervisors under the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since on or about December 24, 1990, the Union has requested the Respondent to bargain and, since January 17, 1991, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By refusing on and after January 17, 1991, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. Mar-Jac Poultry Co., 136 NLRB 785 (1962); Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); Burnett Construction Co., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, BPS Guard Services, Inc., d/b/a Burns International Security Services, Chesterton, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Union, United Plant Guard Workers of America (UPGWA), as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time security officers employed by the Employer who perform guard services for the Bethlehem Steel Corporation at its Burns Harbor facility; but excluding all other employees, and all security lieutenants, captains and other supervisors under the Act.

(b) Post at its facility in Chesterton, Indiana, copies of the attached notice marked "'Appendix.'"² Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. April 30, 1991

James M. Stephens, Chairman

Mary Miller Cracraft, Member

Dennis M. Devaney, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Union, United Plant Guard Workers of America (UPGWA), as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time security officers employed by the Employer who perform guard services for the Bethlehem Steel Corporation at its Burns Harbor facility; but excluding all other employees, and all security lieutenants, captains and other supervisors under the Act.

BPS GUARD SERVICES, INC.,
d/b/a BURNS INTERNATIONAL
SECURITY SERVICES

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 575 North Pennsylvania Street, Room 238, Indianapolis, Indiana 46204-1577, Telephone 317--226--7413.